

STATE OF VERMONT
PUBLIC SERVICE BOARD

CPG #NM-44

Application of Martine Rothblatt, Estate of Marbina)
Abenaki II, LLC for an Amended Certificate of Public)
Good for an interconnected group net-metered)
photovoltaic electrical power system)

Order entered: 12/29/2011

I. INTRODUCTION

This case involves an application filed by Martine Rothblatt, Estate of Marbina Abenaki II, LLC¹ ("Applicant"), on September 26, 2011, requesting an amendment to an existing Certificate of Public Good ("CPG"), pursuant to 30 V.S.A. §§ 219a and 248 and Vermont Public Service Board ("Board") Rule 5.100, for a net metering system. On May 5, 2001, the Board issued a CPG to the Applicant for a net metering system that consists of a photovoltaic system with a system-rated capacity of 4.32 kW AC. On June 29, 2007, the Board issued an Amended CPG to the Applicant to reflect an additional 15.96 kW AC photovoltaic system, bringing the system-rated capacity to 20.28 kW AC. On April 15, 2009, the Board issued a subsequent Amended CPG to reflect the formation of a group system that includes four electric meters. The Applicant is now seeking a further amendment to the CPG to reflect the addition of a 34.2 kW AC ground-mounted photovoltaic system, and the addition of two electric meters to the group system. The amended group system will now include six electric meters and have a total system capacity of 54.48 kW AC, including 20.28 kW AC located at 736 Upper Notch Road in Lincoln, and 34.2 kW AC located at 1698 West Hill Road in Lincoln, Vermont.

Notice of the application in this docket was sent to all parties as specified in the Board's Rule 5.100. The notice stated that any party wishing to submit comments or request a hearing in

1. The original and amended CPGs were issued to Martine Rothblatt.

this matter needed to file comments with the Board within thirty (30) days of the date that the notice of the application was sent.

On October 25, 2011, Gerald R. Tarrant, Esquire, filed comments and a Notice of Appearance on behalf of Julia B. Wasserman, an adjoining landowner.

On November 16, 2011, the Applicant filed a response to Ms. Wasserman's comments.

On November 30 and December 12, 2011, Ms. Wasserman filed additional comments on the proposed project.

The Board has reviewed the application and accompanying documents and agrees that, pursuant to 30 V.S.A. §§ 219a and 248 and the Board's Rule 5.100, a CPG should be issued without further investigation or hearing.

II. FINDINGS

Based upon the petition and its accompanying documents, the Board makes the following findings in this matter.

1. The net metering project is located on property owned by the Applicant at 736 Upper Notch Road and 1698 West Hill Road in Lincoln, Vermont. Application at Section 1; CPG #NM-44.
2. The new system will be installed on a new structure. Application at Section 4.
3. The photovoltaic system has a system-rated output of 54.48 kW AC, comprised of the previously approved 20.28 kW AC located at 736 Upper Notch Road and the newly proposed 34.2 kW AC to be located at 1698 West Hill Road. The facility is interconnected with the Central Vermont Public Service Corporation electrical distribution system. Application at Section 4, and attachments; CPG #NM-44.
4. The photovoltaic system will be approximately 170 feet in length, 13 feet in height, and 10 feet in width. Letter from Kirk Herander, Vermont Solar, LLC, to Susan Hudson, Clerk of the Board, dated November 9, 2011, at 9 ("PV Deck Layout").
5. Applicant has specified the six meters to be included in the group system by account number and location. Applicant has also provided a method for adding or removing meters included in the group system. Application at Section 7 and attachments.

6. Applicant has designated Nick Mayer as the person responsible for receiving all communications regarding the group system. Application at Section 7 and attachments.

7. All disputes among users of the group system shall be resolved by the Applicant. Application at Section 7.

8. Applicant has certified that the project is in compliance with all of the provisions of Sections 3 and 8 of the application. Based on these submissions, we conclude that the project does not raise a significant issue with respect to the environmental criteria of 30 V.S.A. § 248. Application at Sections 3 and 8 and Attachments.

9. Applicant has certified compliance with the insurance requirements as set forth in Section 3 of the application. Application at Section 3.

III. POSITIONS OF THE PARTIES

Ms. Wasserman states that the proposed West Hill Road project is not residential in size, but rather is institutional in size and scope and will have visual and aesthetic impacts on her property that have not been mitigated by the Applicant. Ms. Wasserman is also concerned that a storage unit may be installed beneath the array. Ms. Wasserman has plans to develop the property across the street from the project site, and has put these plans on hold until she learns the extent of any aesthetic mitigation. For these reasons, Ms. Wasserman has requested a hearing.

The Applicant disagrees that the project is institutional in scope and size, and asserts that its capacity is sufficient to offset the use of several of Ms. Rothblatt's accounts. The Applicant states that existing trees and other natural obstacles provide aesthetic mitigation, and that the full length of the array will not be facing the Wasserman property. The Applicant represents that the only view of the project from West Hill Road will be at the Applicant's driveway, that the project will be at least 275 feet from the road, and that the project will be only marginally visible through existing trees from all other perspectives.

IV. DISCUSSION AND CONCLUSION

Ms. Wasserman has filed comments regarding aesthetic concerns and has requested a hearing.² Board Rule 5.109(A) provides that the Board may hold a hearing for a net metering system when it determines that the system raises a substantive issue with respect to one or more of the criteria of 30 V.S.A. § 248. Pursuant to the Board's Order of April 19, 1999, in PSB Docket No. 6181, *"Investigation into the Use of a Net Metering System for the Purchase and Sale of Electricity from Small Electrical Generating Systems to and from Electric Companies,"* parties with objections or concerns must make a showing that the application raises a significant issue with respect to one or more substantive criteria applicable to the proposed net metering system. Accordingly, the Net Metering Application Form states that persons requesting a hearing regarding a net metering project "must make a showing that the application raises a significant issue regarding one or more of the substantive criteria applicable to the proposed net metering system."³

Pursuant to 3 V.S.A. § 811, the Board has read the record, including correspondence from the parties, and we conclude that Ms. Wasserman has not shown that the project raises a significant issue with respect to the applicable criteria. Ms. Wasserman's comments focus primarily on the aesthetic impacts of the project. Ms. Wasserman asserts that the project will be visible from her undeveloped property to the East of the proposed site, and therefore requests mitigation.

The Board's net-metering rule sets forth the following analytical process for determining whether a project will have an undue adverse impact on aesthetics and scenic or natural beauty:

5.108 Aesthetic Evaluation of Net Metered Projects

(A) The Board has adopted the Vermont Environmental Board's Quechee analysis for guidance in assessing the aesthetic impacts of net metered projects, including wind turbines. In determining whether a project raises a significant issue with respect to aesthetic criteria contained in 30 V.S.A. 248(b)(5), the Board is guided by the two-part test outlined below:

1. First a determination must be made as to whether a project will have an adverse impact on aesthetics and the scenic and natural beauty. In

2. We note that any plans to construct storage units on the Applicant's property are not within the scope of this investigation and do not fall within the Board's jurisdiction pursuant to 30 V.S.A. § 248.

3. State of Vermont Public Service Board Application for a Certificate of Public Good for Interconnected Net Metered Power Systems, at 1. As noted above, the adjoining landowners and other entities specified in Board Rule 5.100 received a copy of the application form for the project before us.

- order to find that it will have an adverse impact, a project must be out of character with its surroundings. Specific factors used in making this evaluation include the nature of the project's surroundings, the compatibility of the project's design with those surroundings, the suitability of the project's colors and materials with the immediate environment, the visibility of the project, and the impact of the project on open space.
2. The next step in the two-part test, once a conclusion as to the adverse effect of the project has been reached, is to determine whether the adverse effect of the project is "undue." The adverse effect is considered undue when a positive finding is reached regarding any one of the following factors:
 - a. Does the project violate a clear, written community standard intended to preserve the aesthetics or scenic beauty of the area?
 - b. Have the applicants failed to take generally available mitigating steps which a reasonable person would take to improve the harmony of the project with its surroundings?
 - c. Does the project offend the sensibilities of the average person? Is it offensive or shocking because it is out of character with its surroundings or significantly diminishes the scenic qualities of the area?
 3. Analysis of whether a particular project will have an "undue" adverse effect on aesthetics and scenic or natural beauty is also significantly informed by the overall societal benefits of the project.

In addition to the Quechee analysis, the Board's consideration of aesthetics under Section 248 is "significantly informed by overall societal benefits of the project."⁴

The proposed project, at approximately 13 feet in height and 10 feet in width, is relatively small in profile when compared to the house located on the property. While the project will be approximately 170 feet in length, it will be seen either end-on, or at a slight angle, from West Hill Road and the undeveloped Wasserman property. We agree with Ms. Wasserman that the project will be visible from certain vantage points. However, the project will be located over 300 feet from the undeveloped Wasserman property. Views of the project will be at least partially blocked by the trees and "other natural obstacles" to the east of the project. Thus, we conclude that Ms. Wasserman has not shown that the project is out of character with its

4. *In Re: Northern Loop Project*, Docket 6792, Order of 7/17/03 at 28 ("Northern Loop").

surroundings and, consequently, has not shown that the project raises a significant issue with respect to adverse aesthetic impacts.⁵

Consequently, because we find that Ms. Wasserman has not shown that the project raises a significant issue with respect to the substantive criteria of 30 V.S.A. § 248, further proceedings, including hearings, in this matter are unnecessary.

In Docket No. 6181,⁶ the Board developed a net metering program in accordance with the statutory requirements of 30 V.S.A. § 219a. This program was further refined by the Board with the adoption of Board Rule 5.100 on March 1, 2001. The goals of the Order and Rule are to encourage private investment in renewable energy resources, stimulate the economic growth of the state and enhance the continued diversification of energy sources used in Vermont. The standards and requirements adopted in the Order and Rule have been determined by the Board to protect public safety and system reliability.

Based upon the findings and evidence, the amended net metering project will be in compliance with the requirements of the Board's Order in Docket No. 6181 and Rule 5.100, the application does not raise a significant issue with respect to the substantive criteria of 30 V.S.A. § 248, and the project will promote the general good of the state.

V. ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that the group net metering system as amended and in accordance with the evidence and plans submitted in this proceeding, will promote the general good of the State of Vermont pursuant to 30 V.S.A. § 219a, and an Amended Certificate of Public Good to that effect shall be issued in this matter, pursuant to 30 V.S.A. §§ 219a and 248.

5. Because the comments have not shown that the project raises a significant issue under the first step of the Quechee analysis, there is no need to continue to the second prong of the analysis that would have examined possible mitigation measures including alternative locations for siting the project.

6. *Investigation into the Use of A Net Metering System for the Purchase and Sale of Electricity from Small Electrical Generating Systems to and from Electric Companies*, Docket No. 6181, April 21, 1999.

DATED at Montpelier, Vermont, this 29th day of December, 2011.

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| <u>s/ James Volz</u> |) | |
| |) | PUBLIC SERVICE |
| |) | |
| <u>s/ David C. Coen</u> |) | BOARD |
| |) | |
| |) | OF VERMONT |
| <u>s/ John D. Burke</u> |) | |

OFFICE OF THE CLERK

Filed: December 29, 2011

Attest: s/ Susan M. Hudson
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.